IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER

S.B. Civil Writ Petition No.2508/06
Suraj Prakash Vs. Rent Control Tribunal, Ajmer.

Date of Order :: 1st November, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri M.M. Ranjan, Advocate with
Shri O.P. Mishra for petitioner.
Shri U.M. Jain, Advocate for respondents.

The petitioner has challenged the order dated 9.1.2006 passed by the Rent Appellate Tribunal, Ajmer whereby the judgment of the Rent Tribunal as originally passed rejecting the petition for eviction of the petitioner dated 19.5.2004 was set aside and the appeal was partly accepted with the direction to the petitioner tenant to handover vacant possession of the tenanted premises to the respondent-landlord within three months failing which to pay to the respondent-landlord three times the

normal rent with a further direction that the landlord shall be entitled to again let out the property for a period of three years.

Shri M.M. Ranjan, the learned counsel for the petitioner has argued that the learned Rent Appellate Tribunal erred in law in interfering with the judgment passed by the Rent Tribunal which was based on correct appreciation of law and the facts. The Rent Tribunal had given the specific finding while deciding issue no.1 that there is one room in the ground floor and one shop of Nemi Chand with one set of latrine and bathroom as also open chowk is in possession of the landlord. It was argued that the landlord has suppressed the accommodation available to him. The Tribunal relied on Exhibit 3 for coming to the conclusion that the plaintiff was having possession of aforesaid accommodation with one passage to enter to the chowk and the rooms. One additional shop was in possession of

the landlord. He argued that the trial court had given cogent reasons to disbelieve the requirement of ground floor on the ground that the plaintiff had failed to prove that he was suffering from arthritis. Such a comprehensive and elaborate judgment given with sound reasoning could not have been lightly interfered with by the Appellate Rent Tribunal. Shri M.M. Ranjan also argued that the landlord in his cross examination had accepted that one vacant shop, details of which have been disclosed in the petition, was in his possession. Shri M.M. Ranjan in support of his arguments relied on the judgment of Hon'ble Supreme Court in S.J. Ebenezer Vs. Velayudhan & Ors., AIR 1998 SC 746 and prayed that the writ petition be allowed.

On the other hand, Shri U.M. Jain, the learned counsel for the respondent argued that the Rent Tribunal in the original judgment

failed to correctly appreciate that the accommodation in possession of the landlord was hardly sufficient for meeting the requirement of both husband and wife. He argued that the husband and wife were respectively 80 and 75 years of age and suffering from various ailments. In support of his argument, learned counsel for the respondent relied on the judgment of Supreme Court in Mst. Bega Begum & Ors. Vs. Abdul Ahad Khan (dead) by L.Rs and Ors.-AIR 1979 SC 272 and this Court in Heera Lal Vs. Rent Tribunal, Bikaner & Ors.-2005 (2) DNJ (Raj.) 1123 & Surendra Kumar Vs. Dungar Mal-2005(2) CDR 950 (Raj.) and on the judgment of Delhi High Court in Shri Krishna Kumar & Anr. Vs Mrs. Vimla Saigal-1969 RCR 236 and the judgment of Madras High Court in G.N. Rajaram Vs. Mukunthu N. Venkatarama Iyer-1985(2) RCR 609. It was argued that learned Tribunal in original order was unduly influenced by the

fact that apart from the ground floor, the petitioner was also in possession of the accommodation on the first and second floor and went to the extent of holding that the landlord, if he wanted to create additional accommodation on the ground floor, he could do so by demolishing the wall of the shop having its opening into the chowk. The Tribunal therefore erred in law in holding that the need of the landlord was not bonafide. The Tribunal also erred in holding that the ailment of the wife of the petitioner was not proved because report of any Medical Board was not produced. The ailment of knee pains of the landlord and heart and asthma of his wife were not taken to have been proved for want of the report of the medical board. It was argued that there was otherwise sufficient evidence on record, therefore, the learned Appellate Rent Tribunal has rightly interfered with the matter and

reversed the judgment of the Rent Tribunal. As regards the argument that the landlord was having another shop which could be opened into the chowk by demolishing the wall, it was argued that the petitioner was using this shop as office where he was doing the work of astrology as the source of his livelihood. The landlord was the best person to decide as to which shop is useful to him to provide sufficient accommodation in the ground floor. Apart from the shop which was already in possession of the petitioner, one additional shop was required to make it a complete room because as of now he was having another room of very small size apart from latrine and bath room on the ground. The landlord wanted the additional room for the purpose of kitchen and store to make a complete unit for their purpose. It was denied that the landlord has made any concealment about the additional

accommodation. In fact, no such plea was set up by the petitioner tenant in his written statement and he cannot be allowed to argue it earlier only. Had he set up any such plea, the landlord would have certainly clarified that possession before original Rent Tribunal itself. The learned counsel for the respondent in support of his argument relied on the judgment of Hon'ble Supreme Court in Meenal Eknath Kshirsagar Vs. M/s. Traders & Agencies 1996(2) RCR 233.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

The Rent Tribunal in order to appreciate the personal bonafide / reasonable need of the landlord, apart from the reasonable belief as generally understood, was also required to appreciate that the legislature under Section 10(1)(i)(c) has provided an

additional right to the landlord to seek eviction of the tenant on the premise that he being a senior citizen suffers from some such disability due to which he is unable to climb up stairs and requires ground accommodation available at the ground floor for his own residence. In that event, the landlord becomes entitled to immediate possession of the premises. Section 9 of the Rajasthan Rent Control Act, 2001 in its clause (i) independently provides that if the premises are required for reasonable and bonafide need of the landlord for the use or occupation of himself or his family or for the use or occupation of any person for whose benefit the premises are held, he can ask for eviction of the tenant on that ground. In the present case, the landlord was stated to be 80 years of age in 2003 when the petition was filed before the Rent Tribunal and now when 4 more years have

gone by since then, he should by now attained the age of 84 years and his wife who was 74 years of age then would now be 78 years old. The landlord cited his own ailment of knee pain which created difficulty for him to climb up and down the first floor and the second floor and he also cited the heart ailment as well as asthma of his wife as the difficulty in making use of the accommodation available at the first and second floor. When in a petition for eviction, both these grounds are raised with reference to Section 9(i) and 10(1)(i)(c), they in fact became supplemental to each other. In facts like these, the landlord can pray for decree of eviction on both these two grounds together, there being no conflict therein. In my considered view, the learned Rent Tribunal in the present case has taken an incorrect approach when it held that the landlord has not proved his permanent disability by producing

certificate from any duly constituted Medical Board and has filed the application only on the ground of reasonable bona fide necessity as provided by Section 9(i). The learned Rent Appellate Tribunal was justified in holding that there was otherwise sufficient evidence available on record to prove that the landlord was having ailment of arthritis and was undergoing treatment and that his wife who at that time was 74 years old was also suffering from heart ailment and asthma and had pains in her knees. She was also undergoing the treatment of the doctors. Certain documents as Ex.P-2, P-3 and P-4 with regard to treatment of the petitioner were also produced and they have proved the fact that the landlord needed the premises at the ground floor for his bona fide personal necessity as also on account of the fact of old age of husband and wife as they were not capable of using first floor and

second floor and accommodation on ground floor was needed by them for bona fide and reasonable necessity. It must be observed that the court can take judicial notice of the fact that after a certain age, a person may be advised by way of preventive measure to exercise such precautions such as not to frequently climb up the stairs to over exert to the body and similarly, for reasons of knee pains due to arthritis or otherwise, any one of such ailments by which the old aged persons suffers. Those facts can be proved by the prescriptions issued by the doctors, medicines prescribed and purchased by the landlord or by any of his relations. Section 10(3) of the Act inter alia provides that where a landlord has incurred such permanent disability due to which he cannot use the staircase and requires the ground floor premises for his residence, he shall be entitled to recover immediate

possession of the same ground floor premises on his furnishing a certificate from duly constituted Medical Board of Government Hospital. Now here in the present case even if the landlord has not been able to produce the medical certificate of a duly constituted Medical Board by a Government Hospital, the evidence of this aspect nevertheless form basis for a decree of eviction with reference to Section 9(i) that “the premises are required reasonably and bonafide by the landlord for the use or occupation of himself or his family or for the use or occupation of any person for whose benefit the premises are held.” No fault therefore can be found in the view taken by the Rent Appellate Tribunal. It is trite law that the landlord is the best person to decide as to which of the premises out of the tenanted premises, would be suitable for his purpose. A tenant cannot be allowed to say that any other

accommodation in possession of another tenant or otherwise available would be more suitable for fulfilling the requirement of the landlord. In the facts of the present case, this has to be examined not only from the point of view of the tenant but preferably from the point of view of the landlord keeping in view all aspects of the matter such as the available space vis-a-vis the required one, age of the landlord and his general health. Adverting to the argument that the landlord did not disclose the availability of additional accommodation, therefore, this would amount to suppression of facts as held by their Lordships in Meenal Eknath Shirsagar, supra, it should be noted that this factum alone would not amount to suppression of fact and cannot form the sole basis for rejecting the case of the landlord. The petitioner is also seeking to only orally raise this plea of suppression of any

additional accommodation and did not plead the same in his written statement. Ratio of the judgment of S.J. Ebenezer Vs. Velayudhan & Ors., supra relied on by Shri M.M. Ranjan, the learned counsel for the petitioner cannot be applied to the facts of the present case because in the instant case the Appellate Rent Tribunal cannot be taken to have substituted the views expressed by the Rent Tribunal but the issue has been approached by the Appellate Tribunal by correctly appreciating the law as well as evidence.

In view of what has been discussed above, I do not find any merit in this writ petition.

The writ petition is therefore dismissed with no order to costs.

(Mohammad Rafiq),J.

RS/